

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF NEW YORK  
MICHAEL RESTO-OTERO,**

**Plaintiff,**

**9:17-cv-1115  
(GLS/DEP)**

**v.**

**IMAM MOHAMMAD,**

**Defendant.**

**APPEARANCES:**

**OF COUNSEL:**

**FOR PLAINTIFF**

MICHAEL RESTO-OTERO  
Plaintiff *Pro Se*  
10-B-1849  
Auburn Correctional Facility  
P.O. Box 618  
Auburn, NY 13021

**FOR DEFENDANTS:**

HON. BARBARA D. UNDERWOOD  
New York Attorney General  
The Capitol  
Albany, NY 12224

DAVID A. ROSENBERG  
Assistant Attorney General

**Gary L. Sharpe  
Senior District Judge**

**ORDER**

The above-captioned matter comes to this court following a Report and Recommendation by Magistrate Judge David E. Peebles duly filed on October 3, 2018. (Dkt. No. 26.) Following fourteen days from the service

thereof, the Clerk has sent the file, including any and all objections filed by the parties herein.

No objections having been filed, and the court having reviewed the Report and Recommendation for clear error, it is hereby

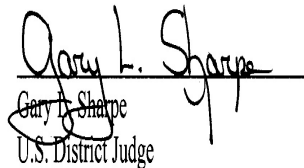
**ORDERED** that the Report and Recommendation (Dkt. No. 26) is **ADOPTED** in its entirety; and it is further

**ORDERED** that defendant's motion to dismiss (Dkt. No. 21) is **DENIED**; and it is further

**ORDERED** that the Clerk provide a copy of this Order to the parties in accordance with the Local Rules.

**IT IS SO ORDERED.**

November 5, 2018  
Albany, New York

  
Gary L. Sharpe  
U.S. District Judge